Chapter 7

BUILDINGS AND BUILDING REGULATIONS

Articles:

Article 7-1

TECHNICAL CODES

Sections:

Section 7-1-1 Adoption by Reference; Violations

A. The following listed publications, three copies of which are on file in the office of the town clerk and which are available for public inspection during normal business hours, are hereby adopted by reference, together with all appendices and supplements thereto, as if set out at length in this code:

1. The International Building Code, 2012 Edition and all supplements, as published by the International Code Council.
2. The International Mechanical Code, 2012 Edition and all supplements, as published by the International Code Council.
3. The National Electrical Code, 2011 Edition and all supplements, as published by the National Fire Protection Association.
4. The International Swimming Pool and Spa Code, 2012 Edition and all supplements, as published by the International Code Council.
5. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition and all supplements, as published by the International Conference of Building Officials.
6. The International Plumbing Code, 2012 Edition and all supplements, as published by the International Code Council.
7. The most recent edition of the Maricopa Association of Governments Standard Specifications and Uniform Details for Public Works Construction.
8. The International Energy Conservation Code, 2006 Edition and all supplements, as published by the International Code Council; provided that Section 504.7.3 (Pool Covers) is specifically excluded from adoption.
9. The International Fire Code, 2012 Edition and all supplements, as published by the International Code Council.
10. The International Residential Code, 2012 Edition including all supplements, as published by the International Code Council.
11. The International Fuel Gas Code, 2012 Edition and all supplements, as published by the International Code Council.
12. The Fountain Hills Amendments to the 2012 International Building Code, the 2012 International Residential Code, the 2012 International Energy Conservation Code and the 2012 International Fire Code.

B. Prior-Adopted Fire Code Preserved. The Council find and determines that the adoption of the 2012 International Fire Code, or any subsequent fire-safety code, shall not effect the validity of

the Town's existing fire sprinkler requirements. To ensure preservation of the Town's fire sprinkler requirements, if there is a reference in the above-described codes to a residential fire sprinkler requirement, the applicable code shall be the 2006 International Fire Code, amended as follows, which code and amendment were adopted by the Council on April 17, 2008:

903.2 Where required. An automatic sprinkler system shall be installed throughout all levels of all new Groups A, B, E, F, H, I, M, R, S and U occupancies of more than zero square feet in accordance with section 903, the Fire Department Interpretation and Applications Manual, and as set forth below:

1. In every story or basement of all buildings. Fire-resistive substitutions in accordance with provisions in the International Building Code, Chapter 6, footnote d, are allowed for this subsection for Group R occupancies and for other occupancies, provided that the automatic sprinkler is not otherwise required throughout the building by any other provision or section of the applicable building code.
2. At the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Sprinkler heads shall be accessible for servicing.
3. In rooms where nitrate film is stored or handled. See also Section 306.
4. In protected combustible fiber storage vaults.
5. In any building that has a change in occupancy as defined in the applicable building code.

   Exceptions: The following accessory structures shall be exempt from fire sprinkler requirements:

   1. Gazebos and ramadas for residential and public use.
   2. Independent rest room buildings associated with golf courses, parks and similar uses.
   3. Guardhouses for residential and commercial developments.
   4. Detached, non-combustible carports for residential and commercial developments with covered parking less than 15,000 square feet (1394 m^2).
   5. Barns and agricultural buildings for private, residential, non-commercial use, not exceeding 1,500 square feet (139.35 m^2) with no habitable areas.
   6. Detached storage sheds for private, residential, non-commercial use, not exceeding 1,500 square feet (139.35 m^2).
   7. Detached one, two and three car garages (without habitable spaces) in existing R-3 developed parcels which contain existing non-sprinklered subdivision requirements (i.e. 700 foot (213.36 m) hydrant spacing.
   8. For fuel dispensing canopies not exceeding 1,500 square feet (139.35 m^2).
   9. Open shade horse stalls of non-combustible construction for private, residential, non-commercial use, not exceeding 5,000 square feet (464.52 m^2) and not containing combustible products, vehicles or agricultural equipment.
   10. Detached one-story accessory building used as a tool and/or storage shed containing non-hazardous materials and not exceeding 200 square feet (11.15 m^2).

11. Special use non-combustible structures as approved by the Chief.

903.2.1 Group A. An automatic sprinkler system shall be installed throughout all Group A occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.2 Group E. An automatic sprinkler system shall be installed throughout all Group E occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.3 Group F. An automatic sprinkler system shall be installed throughout all Group F occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.4 Group H. An automatic sprinkler system shall be installed throughout all Group H occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.5 Group I. An automatic sprinkler system shall be installed throughout all Group I occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

> **Exception:** In jails, prisons and reformatories, the piping system may be dry, provided a manually operated valve is installed at a continuously monitored location. Opening of the valve will cause the piping system to be charged. Sprinkler heads in such systems shall be equipped with fusible elements or the system shall be designed as required for deluge systems in the applicable building code.

903.2.6 Group M. An automatic sprinkler system shall be installed throughout all Group M occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.7 Group R. An automatic sprinkler system shall be installed throughout all Group R occupancies in accordance with NFPA 13, 13-R, or 13D Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.8 Group S-1 occupancies. An automatic sprinkler system shall be installed throughout all Group S-1 occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

> **903.2.8.1 Repair garages.** An automatic sprinkler system shall be installed throughout all repair garages in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.9 Group S-2 occupancies. An automatic sprinkler system shall be installed throughout all Group S-2 occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

> **903.2.9.1 Commercial parking garages.** An automatic sprinkler system shall be installed throughout all commercial parking garages in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation

and Applications Manual.

903.2.10 All Group R-3 and U occupancies. An automatic sprinkler system shall be installed throughout all Group R-3 and U occupancies in accordance with NFPA 13 or 13-D Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.2.14 Group B occupancies. An automatic sprinkler system shall be installed throughout all Group B occupancies in accordance with NFPA 13 Installation of Sprinkler Systems as modified by the Fire Department Interpretation and Applications Manual.

903.3 Installation requirements. Automatic sprinkler systems shall be designed and installed in accordance with NFPA 13, 13-R, 13-D as modified by the Fire Department Interpretation and Applications Manual.

903.3.5.3 Use of non-potable water for fire protection.

1. All commercial structures for which a building permit is issued adjacent to golf courses using non-potable or reclaimed water for irrigation with sufficient storage capacity onsite may be sprinklered using this supply.

2. Irrigation systems shall be designed to meet the Fire Department's standards of gallons per minute flow and pressure necessary to supply adequate fire flow.

3. A standby power supply for pumping station supplying fire flow shall be provided.

4. Fire hydrants on domestic supply shall be placed in close proximity to the Fire Department connection for structural sprinkler systems to provide a secondary water supply.

5. Fire hydrants placed on approved non-potable, reclaimed water supply systems, shall have caps and bonnet painted with a prime coat plus two coats of black paint. A placard shall be affixed to the hydrant in English and Spanish DO NOT DRINK WATER. Non-potable water supplies shall use approved material for construction of all mains and supply lines and shall have the written approval of the town manager or his designee.

6. All water inlets for non-potable systems shall be required to have a sufficient straining and filtering capacity to eliminate all foreign objects from blocking sprinkler orifice. Chlorination of inlet lines shall be required.

903.3.6 Hose threads. Fire hose threads used in connection with automatic sprinkler systems shall be National Standard Threads.

903.3.7 Fire Department connections. Fire Department connections shall be located within 4 feet (1219.2 mm) to 8 feet (2438.4 mm) of the curb line of an access road or public street, or as otherwise specified or as approved by the Chief. The Fire Department connection line shall be a wet line with the check valve at the hose connection above grade. The access to the fire department connection shall be at curb grade. See Fire Department Interpretation

and Applications Manual.

903.3.7.1 Wall mounted. Systems may have wall mounted fire department connections only on light and ordinary hazard Group I systems when there are no structural openings or combustible overhangs within 15 feet (4572 mm) horizontally or vertically from inlet connection. See Fire Department Interpretation and Applications Manual.

903.3.7.2 Additions, alterations and repairs. When the gross area of additions, alterations, remodeling, reconstruction and repairs within a twelve month period exceed 50% of the gross area of the existing building or structure, such building or structure shall have an automatic fire sprinkler system installed throughout the entire structure or building in accordance with this section.

903.3.7.3 Partial systems prohibited. In all new additions to existing non-sprinklered buildings and structures, an automatic sprinkler system shall be installed in accordance with this section. There shall be no partially sprinklered compartments. Sprinklered and unsprinklered areas of a structure shall be separated in accordance with all applicable codes and standards.

903.4 Sprinkler system monitoring and alarms. All valves controlling the water supply for automatic sprinkler systems, pumps, tanks, water levels and temperature, critical air pressure and water-flow switches on all sprinkler systems shall be electrically supervised. See Fire Department Interpretation and Applications Manual.

Exceptions:

1. Automatic sprinkler systems protecting one- and two-family dwellings.
2. Limited area systems serving fewer than 20 sprinklers for E, H, and I occupancies and more than 100 sprinklers in all other occupancies.
3. Automatic sprinkler systems installed in accordance with NFPA 13R where a common supply main is used to supply both domestic and automatic sprinkler systems and a separate shutoff valve for the automatic sprinkler system is not provided.
4. Jockey pump control valves that are sealed or locked in the open position.
5. Paint spray booths or dip tanks that are sealed or locked in the open position.
6. Valves controlling the fuel supply to fire pump engines that are sealed or locked in the open position.
7. Trim valves to pressure switches in dry, pre-action and deluge sprinkler systems that are sealed or locked in the open position.

903.4.2 Alarms. Approved audible devices shall be connected to every automatic sprinkler system. Such sprinkler water-flow alarm device shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided on the exterior of the building in an approved location. An interior alarm to alert the occupants shall be provided in the interior of the building in a normally occupied location when off-site monitoring is required. Where a fire alarm system is installed, activation of the automatic sprinkler system shall actuate the building fire alarm system.

C. It is unlawful for any person to violate any of the provisions of the publications adopted in subsection A of this section.

D. Penalties for Violating the Technical Codes

1. General

Any person found guiltily of violating any provision of the publications adopted in subsection A of this section shall be subject to a civil sanction for the first such violation, punishable by a fine not to exceed $2,500.00 base fine and, for a subsequent violation thereof, shall be guilty of a clad one misdemeanor, punishable by a fine not to exceed $2,500.00 base fine or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

2. Civil Sanction

Any person that commits a civil violation shall be subject to a civil (non-criminal) action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed, $2,500.00 base fine for each violation.

3. Criminal Violation

A person that commits a criminal violation shall be subject to a criminal action in any court of competent jurisdiction and, if found guilty thereof, shall be guilty of a class one misdemeanor, punishable by a fine not to exceed $2,500.00 base fine or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.

4. Violations Not Exclusive

Violations of this section are in addition to any other violation enumerated within the Town's ordinances and codes and in no way limit the penalties, actions or abatement procedures, which may be taken by the Town for any violation of this section, which is also a violation of any other ordinance or code provision of the Town or statutes of the state.

(13-06, Amended, 10/17/2013; 08-14, Amended, 10/16/2008, text addition; 08-07, Amended, 04/17/2008; 03-12, Amended, 08/07/2003)

Section 7-1-2 Repealed

Repealed

(08-14, Repealed, 10/16/2008; Ordinance 01-08, Amended, 03/01/2001, Adopted by Council 3/1/01)

Article 7-2

FEES

Sections:

Section 7-2-1 Fees

A. Permit Fees. The permit fee for all new structures and for all renovation, remodeling and repairs, shall be in such amount as approved by the Council by resolution or as part of the Town's annual budget.

B. Plan Review Fees. When a plan or other data for all new structures and for all renovation, remodeling and repairs is required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. Said plan review fee shall be in such amount as approved by the Council by resolution or as part of the Town's annual budget.

(98-28, Amended, 09/03/1998)
(09-08, Amended, 07/02/2009; 08-14, Amended, 10/16/2008)

Article 7-3

POLLUTION REDUCTION

Sections:

Section 7-3-1 Fireplace Restrictions

A. For the purposes of this Section, the following words and terms shall have the meaning ascribed thereto:

1. "Fireplace" means a built-in place masonry hearth and fire chamber or a factory-built appliance designed to burn solid fuel or to accommodate a gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes.
2. "Solid fuel" means and includes, but is not limited to, wood, coal or other nongaseous or nonliquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as "inappropriate fuel" to burn in residential woodburning devices.
3. "Woodstove" means a solid-fuel burning heating appliance including a pellet stove, which is either freestand or designed to be inserted into a fireplace.

B. On or after January 4, 1999, no person, firm or corporation shall construct or install a fireplace or a woodstove, and the Town shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove is one of the following:

1. A fireplace which has a permanently installed gas or electric log insert;
2. A fireplace, woodstove or other solid-fuel burning appliance that has been certified by the United States Environmental Protection Agency as conforming to 40 CFR Part 60, Subpart AAA, or any amendments thereto;
3. A fireplace, woodstove or other solid-fuel burning appliance that has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 CFR Part 60, Subpart AAA, or any amendments thereto;
4. A fireplace, woodstove or other solid-fuel burning appliance that has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 CFR Part 60, Subpart AAA, or any amendments thereto; or
5. A fireplace that has a permanently installed woodstove insert that complies with paragraphs 2, 3 or 4 above.

C. The following installations are not regulated and are not prohibited by this Section:

1. Furnaces, boilers, incinerators, kilns and other similar space heating or industrial process equipment;

2. Cookstoves, barbecue grills and other similar appliances designed primarily for cooking; and

3. Firepits, barbeque grills and other outdoor fireplaces.

D. Fireplaces constructed or installed on or after January 4, 1999 that contain a gas or electric log insert or a woodstove insert shall not be altered to directly burn wood or any other solid fuel.

E. On or after January 4, 1999, no person, firm or corporation shall alter a fireplace, woodstove or other solid fuel burning appliance in any manner that would void its certification or operational compliance with the provisions of this Section.

F. In addition to the provisions and restrictions of this Section, construction, installation or alteration of all fireplaces, woodstoves and other gas, electric or solid-fuel burning appliances and equipment shall be done in compliance with the provisions of the Town Code and shall be subject to permits and inspections required by the Town.

G. Fireplaces constructed or installed on or after January 4, 1999 shall not be altered without first obtaining a permit from the Town to ensure compliance with this Section.

(98-34, Added, 12/03/1998)

Article 7-4

BUILDING OFFICIAL

Sections:

The building official and administrative authority, as such may be referenced in any section of this chapter for all matters pertaining to any building, plumbing, electrical or any other inspections, shall be vested in the office of the town manager or such other person the manager may appoint subject to council approval.

Article 7-5

UTILITY POLES AND WIRES

Sections:

Section 7-5-1 Definitions

In this article unless the context requires otherwise:

A. "Distribution feeder" means that portion of the distribution system feeding from a distribution substation to a specific load area having a capacity of over three thousand KVA.

B. "Existing utility poles and wires" means such poles and wires and other facilities as are in place and in operation as of the effective date of this code and including repairs, replacements, relocations on the same alignment, additions, enlargements, betterments, changes or improvements hereinafter made to maintain or increase service capabilities of existing utility poles, wires, service drops and other facilities, but it does not include extensions made to existing distribution lines.

C. "Transmission line" means an electric line used for the bulk transmission of electricity between generating or receiving points and major substations or delivery points, having a rating of over twelve thousand volts.

D. "Utility poles and wires" means poles and structures, wires, cables, transformers and all other facilities used in or as a part of the distribution or transmission of telephone, telegraph, radio or television communications.

Section 7-5-2 Permit for Erection; Exceptions

After the effective date of this code, no new utility poles and wires shall be erected in the town above the surface of the ground unless a permit is first secured therefore from the town manager or his designee; except that the following construction may be installed without such a permit:

A. Temporary service facilities, such as facilities to furnish emergency service during an outage, facilities to provide service to construction sites, or other service of a limited duration, such as to a fair, carnival, outdoor exhibit or other function where the facilities will be installed for a temporary period only.

B. Pad-mounted transformers or pull boxes, service terminals, pedestal-type telephone terminals, telephone splice closures, or similar on-the-ground facilities normally used with and as a part of an underground electric distribution, telephone, telegraph or television system, or on-the-ground facilities attached to existing overhead facilities which are used for the purpose of connecting an underground system with the existing facilities.

C. Transmission lines and distribution feeder lines, together with related switch yards, substations and related equipment. Service drops from existing overhead lines to new single family residential customers, except when underground service is required by the town's subdivision regulations.

Section 7-5-3 Procedure for Obtaining Permit; Denial and Appeal

Any person seeking a special permit for erection of any new utility poles and wires within the town boundaries and above the surface of the ground shall first make application therefore to the town manager or his designee which application shall be approved or denied. In the event the permit is denied, the applicant may appeal the decision of the town manager or his designee by presenting his objections in writing to the council with a copy to the town manager or his designee within ten days of the town manager's or his designee's denial. The town manager or his designee may grant the permit within five days or shall submit the appeal together with a written report of his recommendations to the council within twenty days of the date of receipt of the appeal. The council may hear arguments and shall decide the matter.

Section 7-5-4 Standards for Issuance of Permits

A special permit for erection of new utility poles and wires may be granted only in the event the applicant makes an affirmative showing that the public's general health, safety and welfare and that of adjacent property owners will not be impaired, endangered or jeopardized by the proposed erection. In deciding such matter, the following factors shall be considered:

A. The location and height of such poles and wires and their relation to present or potential future roads.

B. The crossing of such lines over much traveled highways or streets; the proximity of such lines to schools, churches or other places where people congregate.

C. The probability of extensive flying in the area where such poles and wires are proposed to be located and the proximity to existing or proposed airfields.

D. Fire or other accident hazards from the presence of such poles and wires and the effect, if any, of same upon the effectiveness of fire fighting equipment.

E. The aesthetics involved.

F. The future conditions that may be reasonably anticipated in the area in view of a normal course of development.

G. The practicality and feasibility of underground installations of such facilities with due regard for the comparative costs between underground and overground installations; but a mere showing that an underground installation shall cost more than an overground installation shall not in itself necessarily require issuance of a permit.

Article 7-6

NOISE REGULATIONS DURING CONSTRUCTION

Sections:

Section 7-6-1 Regulations

A. During the times hereinafter set forth, no construction activities of any kind, including but not limited to the making of an excavation, clearing of surface land and loading or unloading material, equipment or supplies, or the operation of mechanically powered tools anywhere in the town limits, shall be permitted, when such activities result in the generation of mechanically or electrically created noise that can be heard by a person with normal hearing within a residential building, the windows of which are closed, if such building is located within five hundred feet of the construction site.

B. The foregoing limitations shall apply to the following times:

1. Prior to 5:30 a.m. and after 6:30 p.m. Monday through Friday from May 15 through September 15.
2. Prior to 6:00 a.m. and after 6:30 p.m. Monday through Friday during the remainder of the year.
3. Prior to 7:00 a.m. and after 5:00 p.m. on Saturdays throughout the year.
4. At all times during Sundays and Legal Holidays.

C. The following activities shall be excluded from such prohibition:

1. Noise resulting from perishable activities, defined as all concrete flat work, termite pre-treatment application and the delivery of perishable landscaping materials shall be allowed as necessary.
2. Noise generated by work being performed by a resident of a building or structure may continue until 10:00 p.m. but may not begin earlier than the times set forth in subsection B of this section.
3. Noise resulting from emergencies, including but not limited to, repair of roofs, windows, doors, electrical, plumbing and mechanical (HVAC) shall be permitted whenever necessary. An emergency shall be defined as any situation where work must be performed in order to prevent serious injury to persons or property.

Section 7-6-2 Penalties

Violation of any provision of Section 7-6-1 is a civil offense. The municipal court of the town shall conduct a hearing and shall assess a sanction of one hundred dollars for a first violation; two hundred dollars for a second violation and five hundred dollars for all subsequent violations. Each day a violation occurs shall constitute a separate event.

Article 7-7

RESERVED

Sections:

Section 7-7-1 Reserved

Reserved
(08-14, Repealed, 10/16/2008)

Section 7-7-2 Reserved

Reserved
(08-14, Repealed, 10/16/2008)

Section 7-7-3 Reserved

Reserved
(08-14, Repealed, 10/16/2008)

Section 7-7-4 Reserved

Reserved
(08-14, Repealed, 10/16/2008)

Section 7-7-5 Reserved

Reserved
(08-14, Repealed, 10/16/2008)

Article 7-8

PLANNING, BUILDING AND ENGINEERING FEES

Sections:

Section 7-8-1 Planning, Building and Engineering Fees

The fees for services provided by the Planning Division, the Building Division and the Engineering Division shall be established by the Town Council as part of the annual budget process or as otherwise adopted by Town Council resolution.
(06-09, Amended, 05/04/2006)

Article 7-9

RESERVED

Sections:

Section 7-9-1 Reserved

Reserved
(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Section 7-9-2 Reserved

Reserved
(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Section 7-9-3 Reserved

Reserved
(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Section 7-9-4 Reserved

Reserved
(08-14, Repealed, 10/16/2008)

Section 7-9-5 Reserved

Reserved
(08-14, Repealed, 10/16/2008; 03-12, Amended, 08/07/2003)

Article 7-10

DEVELOPMENT FEES

Sections:

Section 7-10-1 Legislative Intent and Purpose

This Article is adopted for the purpose of promoting the health, safety and general welfare of the residents of the Town by:

A. Requiring new development to pay its proportionate share of the costs incurred by the Town that are associated with providing Necessary Public Services to new development.

B. Setting forth standards and procedures for creating and assessing development impact fees consistent with the requirements of Arizona Revised Statute ("A.R.S.") §9-463.05, as amended, including requirements pursuant to A.R.S. §9-463.05, Subsection K that, on or before August 1, 2014, the Town replace its development impact fees that were adopted prior to January 1, 2012, with development impact fees adopted pursuant to the requirements of A.R.S. §9-463.05 as amended by the state legislature in SB 1525, Fiftieth Legislature, First Regular Session.

C. Providing for the temporary continuation of certain development impact fees adopted prior to January 1, 2012, until otherwise replaced pursuant to this Article, or longer where such development impact fees were Pledged to support Financing or Debt for a Grandfathered Facility as permitted by A.R.S. §9-463.05, Subsections K, R, and S.

D. Setting forth procedures for administrating the development impact fee program, including Offsets, Credits, and refunds of development impact fees. All development impact fee assessments, Offsets, Credits, or refunds must be administered in accordance with the provisions of this Article.

This Article shall not affect the Town's zoning authority or its authority to adopt or amend its General Plan, provided that planning and zoning activities by the Town may require amendments to development impact fees as provided in Section 7-10-6 of this Article.

(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-2 Definitions

When used in this Article, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural.

Applicant: A person who applies to the Town for a Building Permit.

Appurtenance: Any fixed machinery or Equipment, structure or other fixture, including integrated hardware, software or other components, associated with a Capital Facility that are necessary or convenient to the operation, use, or maintenance of a Capital Facility, but excluding replacement of the same after initial installation.

Aquatic Center: A facility primarily designed to host non-recreational competitive functions generally occurring within water, including, but not limited to, water polo games, swimming meets, and diving events. Such facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities, including but not limited to, locker rooms, offices, snack bars, bleacher seating, and shade structures.

Building Permit: Any permit issued by the Town that authorizes vertical construction, increases square footage, authorizes changes to land use, or provides for the addition of a residential or non-residential point of demand to a Water or Wastewater system.

Capital Facility: An asset having a Useful Life of three or more years that is a component of one or more Categories of Necessary Public Service provided by the Town. A Capital Facility may include any associated purchase of real property, architectural and engineering services leading to the design and construction of buildings and facilities, improvements to existing facilities, improvements to or expansions of existing facilities, and associated financing and professional services. Wherever used herein, "infrastructure" shall have the same meaning as "Capital Facilities."

Category of Necessary Public Service: A class of Necessary Public Services for which the Town is authorized to assess development impact fees, as further defined in Subsection 7-10-7(a)(1) of this Article.

Category of Development: A specific class of residential, commercial, or industrial development against which a development impact fee is calculated and assessed. The Town assesses development impact fees against commercial, residential, and industrial categories.

Commercial Land Use: A use allowed within the zones designated in Chapters 12, 16, 17, 18, and 21 of the Town's Zoning Ordinance and those portions of Planned Area Districts as determined by the Town's Zoning Administrator.

Credit: A reduction in an assessed development impact fee resulting from Developer contributions to, payments for, construction of, or dedications for Capital Facilities included in an Infrastructure Improvements Plan pursuant to Section 7-10-11 of this Article (or as otherwise permitted by this Article).

Credit Agreement: A written agreement between the Town and the Developer(s) of a Subject Development that allocates Credits to the Subject Development pursuant to Section 7-10-11 of this Article. A Credit Agreement may be included as part of a Development Agreement pursuant to Section 7-10-12 of this Article.

Credit Allocation: A term used to describe when Credits are distributed, but are not yet issued, to a particular development or parcel of land after execution of a Credit Agreement.

Credit Issuance: A term used to describe when the amount of an assessed development impact fee attributable to a particular development or parcel of land is reduced by applying a Credit Allocation.

Developer: An individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation or other political subdivision of the state, state agency or other person or entity undertaking land development activity, and their respective successors and assigns.

Development Agreement: An agreement prepared in accordance with the requirements of Section 7-10-12 of this Article, A.R.S. §9-500.05, and any applicable requirements of the Town Code.

Direct Benefit: A benefit to a Service Unit resulting from a Capital Facility that: (a) addresses the need for a Necessary Public Service created in whole or in part by the Service Unit; and (b) meets either of the following criteria: (i) the Capital Facility is located in the immediate area of the Service Unit and is needed in the immediate area of the Service Unit to maintain the Level of Serve, or (ii) the Capital Facility substitutes for, or eliminates the need for a Capital Facility that would have otherwise have been needed in the immediate area of the Service Unit to maintain the Town's Level of Service.

Dwelling Unit: A house, building or portion of a building, apartment, mobile home or trailer, group of rooms, or single room occupied as separate living quarters for residential purpose or, if vacant, intended for occupancy as separate living quarters for residential purpose.

Equipment: Machinery, tools, materials, and other supplies, not including Vehicles, that are needed by a Capital Facility to provide the Level of Service specified by the Infrastructure Improvement Plan, but excluding replacement of the same after initial development of the Capital Facility.

Excluded Library Facility: Library facilities for which development impact fees may not be charged pursuant to A.R.S. §9-463.05, including that portion of any Library facility that exceeds 10,000 square feet, and Equipment, Vehicles or Appurtenances associated with Library operations.

Excluded Park Facility: Parks and Recreational Facilities for which development impact fees may not be charged pursuant to A.R.S. §9-463.05, including amusement parts, aquariums, Aquatic Centers, auditoriums, arenas arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, Water reclamation or riparian areas, wetlands, or zoo facilities.

Fee Report: A written report developed pursuant to Section 7-10-8 of this Article that identifies the methodology for calculating the amount of each development impact fee, explains the relationship between the development impact fee to be assessed and the Infrastructure Improvements Plan, and which meets other requirements set forth in A.R.S. §9-463.05.

Financing or Debt: Any debt, bond, note, loan, interfund loan, fund transfer, other debt service obligation used to finance the development or expansion of a Capital Facility.

Fire and Police Facilities: A Category of Necessary Public Services that includes fire and police stations, Equipment, Vehicles and all Appurtenances for fire and police stations. "Fire and Police Facilities" does not include Vehicles or Equipment used to provide administrative services, helicopters, airplanes or any facility that is used for training firefighters or officers from more than one station or

substation.

General Plan: Refers to the overall land-use plan for the Town establishing areas of the Town for different purposes, zones and activities adopted pursuant to Town Resolution 2009-43 on January 7, 2010, and ratified by the Fountain Hills voters on May 18, 2010, as amended, which includes the Town Center Area Specific Plan adopted pursuant to Town Resolution 2009-40.

Grandfathered Facilities: Capital Facilities provided through Financing or Debt incurred before June 1, 2011 for which a development impact fee has been Pledged towards repayment as described in Section 7-10-4(C) of this Article.

Gross Impact Fee: The total development impact fee to be assessed against a Subject Development, prior to subtraction of any Credits.

Industrial Land Use: A use allowed with the zones designated in Chapters 13 and 14 of the Town's Zoning Ordnance and those portions of Planned Area Development Zoning District as determined by the Town's Zoning Administrator.

Infrastructure Improvement Plan: A document or series of documents that meet the requirements set forth in A.R.S. §9-463.05, including those adopted pursuant to Section 7-10-8 of this Article to cover any Category or combination of Categories of Necessary Public Services.

Land Use Assumptions: Projections of changes in land uses, densities, intensities and population for a Service Area over a period of at least ten years, as specified in Section 7-10-6 of this Article.

Level of Service: A quantitative and/or qualitative measure of a Necessary Public Service that is to be provided by the Town to development in a particular Service Area, defined in terms of the relationship between service capacity and service demand, accessibility, response times, comfort or convenience of use, or other similar measures or combinations of measures, Level of Service may be measured differently for different Categories of Necessary Public Services, as identified in the applicable Infrastructure Improvements Plan.

Library Facilities: A Category of Necessary Public Services in which literary, musical, artistic, or reference materials are kept (materials may be kept in any form of media such as electronic, magnetic, or paper) for use by the public in a facility providing a Direct Benefit to development. Libraries do not include Excluded Library Facilities, although a Library may contain, provide access to, or otherwise support an Excluded Library Facility.

Necessary Public Services: "Necessary Public Services" shall have the meaning prescribed in A.R.S. §9-463.05(T)(7).

Offset: An amount that is subtracted from the overall costs of providing Necessary Public Services to account for those capital components of infrastructure or associated debt that have been or will be paid for by a development though taxes, fees (except for development impact fees), and other revenue sources, as determined by the Town pursuant to Section 7-10-17 of this Article.

Parks and Recreational Facilities: A Category of Necessary Public Services including but not limited to parks, swimming pools and related facilities and Equipment located on real property not larger than 30 acres in areas, as well as park facilities larger than 30 acres where such facilities provide a Direct Benefit. Parks and Recreational Facilities do not include Excluded Park Facilities, although Parks and Recreational Facilities may contain, provide access to, or otherwise support an Excluded Park Facility.

Pledged: Where used with reference to a development impact fee, a development impact fee shall be considered "Pledged" where it was identified by the Town as a source of payment or repayment for Financing or Debt that was identified as the source of financing for a Necessary Public Service for which a development impact fee was assessed pursuant to the then-applicable provisions of A.R.S. §9-463.05.

Qualified Professional: Any one of the following: (a) a professional engineer, surveyor, financial analyst or planner, or other licensed professional providing services within the scope of that person's education or experience related to Town planning, zoning, or impact development fees and holding a license issued by an agency or political subdivision of the State of Arizona; (b) a financial analyst, planner or other non-licensed professional who is providing services within the scope of the person's education or experience related to Town planning, zoning, or impact development fees; or (c) any other person operating under the supervision of one or more of the above.

Residential Land Use: A use allowed within the zones designated in Chapters 10 and 11 of the Town's Zoning Ordinance or those portions of uses allowed in Chapters 18 and 23 as determined by the Town's Zoning Administrator.

Service Area: Any specified area within the boundaries of the Town within which: (a) the Town will provide a Category of Necessary Public Services to development at a planned Level of Service; and (b) within which (i) a Substantial Nexus exists between the Capital Facilities to be provided and the development to be served, or (ii) in the case of Library Facilities or a Park Facility larger than 30 acres, a Direct Benefit exists between the Library Facilities or Park Facilities and the development to be served, each as prescribed in the Infrastructure Improvements Plan. Some or all of the Capital Facilities providing service to a Service Area may be physically located outside of that Service ARea provided that the required Substantial Nexus or Direct Benefit is demonstrated to exist.

Service Unit: A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of Necessary Public Services or facility expansion.

Street Facilities: A Category of Necessary Public Services including arterial or collector streets or roads, traffic signals, rights-of-way, and improvements thereon, and other necessary included facilities such as bridges, culverts, irrigation tiling, storm drains, and regional transportation facilities.

Storm Water, Drainage and Flood Control Facilities: A Category of Necessary Public Services including but not limited to storm sewers constructed in sizes needed to provide for stormwater management for areas beyond major street projects and stormwater detention/retention basins, tanks, pump stations and channels necessary to provide for proper stormwater management, including any Appurtenances for those facilities.

Subject Development: A land area linked by a unified plan of development, which must be contiguous unless the land area is part of a Development Agreement executed in accordance with Section 7-10-12 of this Article.

Substantial Nexus: A substantial nexus exists where the demand for Necessary Public Services that will be generated by a Service Unit can be reasonably quantified in terms of the burden it will impose on the available capacity of existing Capital Facilities, the need it will create for new or expanded Capital Facilities, and/or the benefit to the development from those Capital Facilities.

Swimming Pool: A public facility primarily designed and/or utilized for recreational

non-competitive functions generally occurring within water, including, but not limited to, swimming classes, open public swimming sessions, and recreational league swimming/diving events. The facility may be indoors, outdoors, or any combination thereof, and includes all necessary supporting amenities.

Town: The Town of Fountain Hills, Arizona.

Useful Life: The period of time during which an asset can reasonably be expected to be used under normal conditions, whether or not the asset will continue to be owned and operated by the Town over the entirety of such period.

Vehicle: Any device, structure, or conveyance utilized for transportation in the course of providing a particular Category of Necessary Public Services at a specified Level of Service, excluding helicopters and other aircraft.

Wastewater Facilities: A Category of Necessary Public Services including, but not limited to, sewers, lift stations, reclamation plants, wastewater treatment plants, and all other facilities for the collection, interception, transportation, treatment and disposal of wastewater, and any Appurtenances for those facilities.

Water Facilities: A Category of Necessary Public Services including, but not limited to, those facilities necessary to provide for water services to development, including the acquisition, supply, transportation, treatment, purification and distribution of water, and any Appurtenances to those facilities.
(14-06, Amended, 06/19/2014; 06-02, Amended, 01/05/2006; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-3 Applicability

A. Except as otherwise provided herein, from and after August 1, 2014, this Article shall apply to all new development within any Service Area.

B. The provisions of this Article shall apply to all of the territory within the corporate limits of the Town and/or within any Town Service Area that extends beyond the corporate limits.

C. The Town Manager or his/her designee is authorized to make determination regarding the application, administration and enforcement of the provisions of this Article.
(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-4 Authority for Development Impact Fees

A. *Fee Report and Implementation.* The Town may assess and collect a development impact fee for costs of Necessary Public Services, including all professional services required for the preparation or revision of an Infrastructure Improvements Plan, Fee Report, development impact fee, and required reports or audits conducted pursuant to this Article. Development impact fees shall be subject to the following requirements:

1. The Town shall develop and adopt a Fee Report that analyzes and defines the development impact fees to be charged in each Service Area for each Capital Facility Category, based on the Infrastructure Improvements Plan, pursuant to Subsection 7-10-7(A) below.

2. Development impact fees shall be assessed against all new commercial, residential, and industrial developments, provided that the Town may assess different amounts of development impact fees against specific Categories of Development based on the actual burdens and costs that are associated with providing Necessary Public Services to that Category of Development.

3. No development impact fees shall be charged, or Credits issued, for any Capital Facility that does not fall within one of the Categories of Necessary Public Services for which development impact fees may be assessed as identified in Subsection 7-10-7(A)(1) below.

4. Costs for Necessary Public Services made necessary by new development shall be based on the same Level of Service provided to existing development in the same Service Area. Development impact fees may not be used to provide a higher Level of Service to existing development or to meet stricter safety, efficiency, environmental, or other regulatory standards to the extent that these are applied to existing Capital Facilities that are serving existing development.

5. Development impact fees may not be used to pay the Town's administrative, maintenance, or other operating costs.

6. Projected interest charges and financing costs can only be included in development impact fees to the extent they represent principal and/or interest on the portion of any Financing or Debt used to finance the construction or expansion of a Capital Facility identified in the Infrastructure Improvements Plan.

7. All development impact fees charged by the Town must be included in a "Fee Schedule" prepared pursuant to this Article and included in the Fee Report, which Fee Schedule may be adopted by the Town Council by resolution or as part of the Town's annual budget.

8. All development impact fees shall meet the requirements of A.R.S. § 9-463.05.

B. *Costs per Service Unit.* The Fee Report shall summarize the costs of Capital Facilities necessary to serve new development on a per Service Unit basis as defined and calculated in the Infrastructure Improvements Plan, including all required Offsets, and shall recommend a development impact fee structure for adoption by the Town.

C. *Carry-over of Previously-Established Development Impact Fees and Grandfathered Facilities.* Notwithstanding the requirements of this Article, certain development impact fees adopted by the Town prior to the effective date of this Article shall continue in effect as follows:

1. Until August 1, 2014, or the date a new development impact fee is effective for the applicable Category of Necessary Public Services in a Service Area pursuant to this Article, whichever occurs first, development impact fees established prior to January 1, 2012, shall continue in full force and effect to the extent that the development impact fee is used to provide a Category of Necessary Public Services that is authorized by Section 7-10-7 below. Development impact fees collected prior to January 1, 2012, shall be expended on Capital Facilities within the same Category of Necessary Public Services for which they were collected.

2. The Town may continue to collect and use any development impact fee established before January 1, 2012, even if the development impact fee would not otherwise be permitted to be collected and spent pursuant to A.R.S. § 9-463.05, as amended by the state legislature in SB

1525, Fiftieth Legislature, First Regular Session, if either of the following apply:

a. Both of the following conditions are met:

i. Prior to June 1, 2011, the development impact fee was Pledged towards the repayment of Financing or Debt incurred by the Town to provide a Capital Facility.

ii. The applicable Capital Facility was included in the Town's Infrastructure Improvements Plan, or other Town planning document prepared pursuant to applicable law, prior to June 1, 2011.

b. Before August 1, 2014, the Town uses the development impact fee to finance a Capital Facility in accordance with A.R.S. § 9-463.05(S).

3. Defined terms in any previously established fee schedule shall be interpreted according to the ordinance in effect at the time of their adoption.

(14-06, Amended, 06/19/2014; 11-11, Amended, 12/15/2011, Deleted C. (Offsets) and reserved for future use.; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-5 Administration of Development Impact Fees

A. *Separate Funds.* Development impact fees collected pursuant to this Article shall be placed in separate funds (for each Capital Facility category within each Service Area) within the City's interest-bearing account.

B. *Limitations on Use of Fees.* Development impact fees and any interest thereon collected pursuant to this Article shall be spent to provide Capital Facilities associated with the same Category of Necessary Public Services in the same Service Area for which they were collected, including costs of Financing or Debt used by the Town to finance such Capital Facilities, and other costs authorized by this Article, that are included in the Infrastructure Improvements Plan.

C. *Time Limit.* Development impact fees collected after July 31, 2014, shall be used within ten years of the date upon which they were collected for all Categories of Necessary Public Services except for Water and Wastewater Facilities. For Water Facilities or Wastewater Facilities collected after July 31, 2014, development impact fees must be used within 15 years of the date upon which they were collected.

(14-06, Amended, 06/19/2014; 08-13, Amended, 05/15/2008; 00-21, Added, 11/16/2000, Approved by the Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-6 Land Use Assumptions

The Infrastructure Improvements Plan shall be consistent with the Town's current Land Use Assumptions for each Service Area and each Category of Necessary Public Services as adopted by the Town pursuant to A.R.S. § 9-463.05.

A. *Reviewing the Land Use Assumptions.* Prior to the adoption or amendment of an Infrastructure Improvements Plan, the Town shall review and evaluate the Land Use Assumptions on which the Infrastructure Improvements Plan is to be based to ensure that the Land Use Assumptions within each Service Area are consistent with the General Plan.

B. *Evaluating Necessary Changes.* If the Land Use Assumptions upon which an Infrastructure Improvements Plan is based have not been updated within the last five years, the Town shall evaluate the Land Use Assumptions to determine whether changes are necessary. If, after general evaluation, the Town determines that the Land Use Assumptions are still valid, the Town shall issue the report required in Section 7-10-9 below.

C. *Required Modifications to Land Use Assumptions.* If the Town determines that changes to the Land Use Assumptions are necessary in order to adopt or amend an Infrastructure Improvements Plan, it shall make such changes as necessary to the Land Use Assumptions prior to or in conjunction with the review and approval of the Infrastructure Improvements Plan pursuant to Section 7-10-9 below.

(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-7 Infrastructure Improvements Plan

A. *Infrastructure Improvements Plan Contents*. The Infrastructure Improvements Plan shall be developed by Qualified Professionals and may be based upon or incorporated within the Town's Capital Improvements Plan. The Infrastructure Improvements Plan shall:

1. Specify the Categories of Necessary Public Services for which the Town will impose a development impact fee, which may include any or all of the following:

    a. Water Facilities
    b. Wastewater Facilities
    c. Stormwater, Drainage, and Flood Control Facilities
    d. Library Facilities
    e. Street Facilities
    f. Fire and Police Facilities
    g. Park and Recreations Facilities

2. Define and provide a map of one or more Service Areas within which the Town will provide each Category of Necessary Public Services for which development impact fees will be charged. Each Service Area must be defined in a manner that demonstrates a Substantial Nexus between the Capital Facilities to be provided in the Service Area and the Service Units to be served by those Capital Facilities. The Town may cover more than one category of Capital Facilities in the same Service Area provided that there is an independent Substantial Nexus or Direct Benefit, as applicable, between each Category of Necessary Public Services and the Service Units to be served.

3. Identify and describe the Land Use Assumptions upon which the Infrastructure Improvements Plan is based in each Service Area.

4. Analyze and identify the existing Level of Service provided by the Town to existing Service Units for each Category of Necessary Public Services in each Service Area.

5. Identify the Level of Service to be provided by the Town for each Category of Necessary Public Services in each Service Area based on the relevant Land Use Assumptions and any established Town standards or policies related to required Levels of Service.

6. For each Category of Necessary Public Services, analyze and identify the existing capacity of the Capital Facilities in each Service Area, the utilization of those Capital Facilities by existing Service Units, and the available excess capacity of those Capital Facilities to serve new Service Units including any existing or planned commitments or agreements for the usage of such capacity. The Infrastructure Improvements Plan shall additionally identify any changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing Service Units, or to meet new safety, efficiency, environmental, or other regulatory requirements for services provided to existing Service Units.

7. Identify any Grandfathered Facilities and the impact thereof on the need for Necessary Public Services in each affected Service Area.

8. Estimate the total number of existing and future Service Units within each Service Area based on the Town's Land Use Assumptions.

9. Based on the analysis in Subsection 7-10-7(A)(3)-(6) above, provide a summary table or tables describing the Level of Service for each Category of Necessary Public Services by relating the required Capital Facilities to Service Units in each Service Area, and identifying the applicable Service Unit factor associated with each Category of Development.

10. For each Category of Necessary Public Services, analyze and identify the projected utilization of any available excess capacity in existing Capital Facilities, and all new or expanded Capital Facilities that will be required to provide and maintain the planned Level of Service in each Service Area as a result of the new projected Service Units in that Service Area, for a period not to exceed ten years. Nothing in this Subsection shall prohibit the Town from additionally including in its Infrastructure Improvements Plan projected utilization of, or needs for, Capital Facilities for a period longer than ten years, provided that the costs of such Capital Facilities are excluded from the development fee calculation.

11. For each Category of Necessary Public Services, estimate the total cost of any available excess capacity and/or new or expanded Capital Facilities that will be required to serve new Service Units, including costs of land acquisition, improvements, engineering and architectural services, studies leading to design, design, construction, financing, and administrative costs, as well as projected costs of inflation. Such total costs shall not include costs for ongoing operation and maintenance of Capital Facilities, nor for replacement of Capital Facilities to the extent that such replacement is necessary to serve existing Service Units. If the Infrastructure Improvements Plan includes changes or upgrades to existing Capital Facilities that will be needed to achieve or maintain the planned Level of Service to existing Service Units, or to meet new regulatory requirements for services provided to existing Service Units, such costs shall be identified and distinguished in the Infrastructure Improvements Plan.

12. Forecast the revenues from taxes, fees, assessments or other sources that will be available to fund the new or expanded Capital Facilities identified in the Infrastructure Improvements Plan, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved Land Use Assumptions. The Infrastructure Improvements Plan shall additionally estimate the time required to finance, construct and implement the new or expanded Capital Facilities.

13. Calculate required Offsets as follows:

    a. From the forecasted revenues in Subsection 7-10-7(A)(12) above, identify those sources of revenue that: (i) are attributable to new development, and (ii) will contribute to paying for the capital costs of Necessary Public Services.

    b. For each source and amount of revenue identified pursuant to Subsection 7-10-7(A)(13)(a) above, calculate the relative contribution of each Category of Development to paying for the capital costs of Necessary Public Services in each Service Area.

    c. Based on the relative contributions identified pursuant to Subsection 7-10-7(A)(13)(b) above, for each Category of Necessary Public Services, calculate the total Offset to be provided to each Category of Development in each Service Area.

    d. For each Category of Necessary Public Services, convert the total Offset to be provided to each Category of Development in each Service Area into an Offset amount per Service Unit by dividing the total Offset for each Category of Development by the number of Service Units associated with that Category of Development.

    e. Beginning August 1, 2014, for purposes of calculating the required Offset, if the Town imposes a construction, contracting, or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate that is imposed on the majority of other transaction privilege tax classifications in the Town, the entire excess portion of the construction, contracting, or similar excise tax shall be treated as a contribution to the capital costs of Necessary Public Services provided to new development unless the excess portion is already taken into account for such purpose pursuant to this Section.

    f. In determining the amount of required Offset for land included in a community facilities district established under A.R.S. Title 48, Chapter 4, Article 6, the Town shall take into account any Capital Facilities provided by the district that are included in the Infrastructure Improvements Plan and the capital costs paid by the district for such Capital Facilities, and shall Offset impact fees assessed within the community facilities district proportionally.

B. *Multiple Plans.* An Infrastructure Improvements Plan adopted pursuant to this Subsection may address one or more of the Town's Categories of Necessary Public Services in any or all of the Town's Service Areas. Each Capital Facility shall be subject to no more than one Infrastructure Improvements Plan at any given time.

C. *Reserved Capacity.* The Town may reserve capacity in an Infrastructure Improvements Plan to serve one or more planned future developments, including capacity reserved through a Development Agreement pursuant to Section 7-10-12 below. All reservations of existing capacity must be disclosed in the Infrastructure Improvements Plan at the time it is adopted.

(14-06, Amended, 06/19/2014; 00-21, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-8 Adoption and Modification Procedures

A. *Adopting or Amending the Infrastructure Improvements Plan.* The Infrastructure Improvements Plan shall be adopted or amended subject to the following procedures:

1. *Major Amendments to the Infrastructure Improvements Plan.* Except as provided in Paragraph 2 of this Subsection, the adoption or amendment of an Infrastructure Improvement Plan shall occur at one or more public hearings according to the following schedule, and may occur concurrently with the adoption of an update of the Town's Land Use Assumptions as provided in Section 7-10-6 above:

    a. Sixty days before the first public hearing regarding a new or updated Infrastructure Improvements Plan, the Town shall provide public notice of the hearing and post the Infrastructure Improvements Plan and the underlying Land Use Assumptions on its website; the Town shall additionally make available to the public the documents used to prepare the Infrastructure Improvements Plan and underlying Land Use Assumptions and any proposed changes to Capital Facilities.

    b. The Town shall conduct a public hearing on the Infrastructure Improvements Plan and underlying Land Use Assumptions at least 30 days, but no more than 60 days, before approving or disapproving the Infrastructure Improvements Plan.

2. *Minor Amendments to the Infrastructure Improvements Plan.* Notwithstanding the other requirements of this Section, the Town may update the Infrastructure Improvements Plan and/or its underlying Land Use Assumptions without a public hearing if all of the following apply:

    a. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not add any new Category of Necessary Public Services to any Service Area.

    b. The changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions will not increase the Level of Service to be provided in any Service Area.

    c. Based on an analysis of the Fee Report and the Town's adopted development impact fee schedules, the changes in the Infrastructure Improvements Plan and/or the underlying Land Use Assumptions would not, individually or cumulatively with other amendments undertaken pursuant to this Subsection, have caused a development impact fee in any Service Area to have been increased by more than five per cent above the development impact fee that is provided in the current development impact fee schedule.

    d. At least 30 days prior to the date that the any amendment pursuant to this Section is adopted, the Town shall post the proposed amendments on the Town website.

B. *Amendments to the Fee Report.* Any adoption or amendment of a Fee Report and fee schedule shall occur at one or more public hearings according to the following schedule:

1. The first public hearing on the Fee Report must be held at least 30 days after the adoption or approval of and Infrastructure Improvements Plan as provided in Subsection A of this Section. The Town must give at least 30 days notice prior to the hearing, provided that this notice may be given on the same day as the approval or disapproval of the Infrastructure Improvements Plan.

2. The Town shall make the Infrastructure Improvements Plan and underlying Land Use Assumptions available to the public on the Town's website 30 days prior to the public hearing described in Paragraph (1) of this Subsection.

3. The Fee Report may be adopted by the Town no sooner than 30 days, and no later than 60 days, after the hearing described in Paragraph (1) of this Subsection.

4. The development fee schedules in the Fee Report adopted pursuant to this Subsection shall become effective as set forth in A.R.S. § 9-463.05.

(14-06, Amended, 06/19/2014; 11-11, Amended, 12/15/2011, Amended by deleting B. and reserved for future use.; 09-09, Amended, 12/03/2009, Fee schedule included in the Ordinance.; 08-13, Amended, 05/15/2008; 06-02, Amended, 05/04/2006, Chart listed in Section #2 was deleted as the annexation of the State Trust Land was completed on May 4, 2006, which was prior to the July 1,2006 deadline that then required the Chart listed in Section #3 be the rates used for calculations.; 06-07, Amended, 03/16/2006; 06-06, Amended, 01/19/2006; 06-02, Amended, 01/05/2006, Heading was previously named Town Marshal Development Fee/Effective 90 days after the adoption of this Ordinance; 01-02, Amended, 01/18/2001, Council Amended 00-22, Effective 4/19/01 at 12:01 a.m. ; 00-22, Added, 11/16/2000, Approved by Council, Effective 2/15/2001 at 12:01 a.m.)

Section 7-10-9 Timing for the Renewal and Updating of the Infrastructure Improvements Plan and the Land Use Assumptions

A. *Renewing the Infrastructure Improvements Plan.* Except as provided in Subsection B of this Section, not later than every five years the Town shall update the applicable Infrastructure Improvements Plan and Fee Report related to each Category of Necessary Public Services pursuant to Section 7-10-8 above. Such five-year period shall be calculated from the date of the adoption of the Infrastructure Improvements Plan or the date of the adoption of the Fee Report, whichever occurs later.

B. *Determination of No Changes.* Notwithstanding Subsection 7-10-9(A) above, if the Town determines that no changes to an Infrastructure Improvements Plan, underlying Land Use Assumptions, or Fee Report are needed, the Town may elect to continue the existing Infrastructure Improvements Plan and Fee Report without amendment by providing notice as follows:

1. Notice of the determination shall be published at least 90 days prior to the end of the five-year period described in Subsection 7-10-9(A) above.

2. The notice shall identify the Infrastructure Improvements Plan and Fee Report that shall continue in force without amendment.

3. The notice shall provide a map and description of the Service Area(s) covered by such Infrastructure Improvements Plan and Fee Report.

4. The notice shall identify an address to which any resident of the Town may submit, within 60 days, a written request that the Town update the Infrastructure Improvements Plan, underlying Land Use Assumptions, and/or Fee Report and the reasons and basis for the request.

C. *Response to Comments.* The Town shall consider and respond to any timely requests submitted pursuant to Subsection 7-10-9(B)(4) above.

(14-06, Amended, 06/16/2014; 06-02, Delete Renumbered, 01/05/2006, Previous heading named Street Development Fee - deleted and Section 7-10-13 renumbered to 7-10-9; 01-04, Amended, 01/18/2001, Council Amended 00-23, Effective 4/19/01 at 12:01 a.m.; 00-23, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-10 Collection of Development Impact Fees

A. *Collection*. Development impact fees, together with administrative charges assessed pursuant to Subsection 7-10-10(A)(5) below, shall be calculated and collected prior to issuance of permission to commence development; specifically:

1. Unless otherwise specified pursuant to a Development Agreement adopted pursuant to Section 7-10-12 below, development impact fees shall be paid prior to issuance of a Building Permit according to the current development impact fee schedule for the applicable Service Area(s) as adopted pursuant to this Article, or according to any other development impact fee schedule as authorized in this Article.

2. If the development is located in a Service Area with a Stormwater, Drainage, and Flood Control development impact fee, and neither a Building Permit, Water, or sewer service connection is required, the Storm Drainage development impact fee due shall be paid at the time any permit is issued for the development.

3. No Building Permit, Water or sewer connection, or certificate of occupancy shall be issued if a development impact fee is not paid as directed in the previous Subsections.

4. If the Building Permit is for a change in the type of building use, an increase in square footage, a change to land use, or an addition to a residential or non-residential point of demand to the Water or Wastewater system, the development impact fee shall be assessed on the additional service units resulting from the expansion or change, and following the development impact fee schedule applicable to any new use type.

5. For issued permits that expire or are voided, development impact fees and administrative charges shall be as follows:

    a. If the original permittee is seeking to renew an expired or voided permit, and the development impact fees paid for such development have not been refunded, then the permittee shall pay the difference between any development impact fees paid at the time the permit was issued and those in the fee schedule at the time the permit is reissued or renewed.

    b. If a new or renewed permit for the same development is being sought by someone other than the original permittee, the new permit Applicant shall pay the full development impact fees specified in the fee schedule in effect at the time that the permits are reissued or renewed. If the original permittee has assigned its rights under the permits to the new permit Applicant, the new permit Applicant shall pay development impact fees as if it were the original permittee.

B. *Exceptions*. Development impact fees shall not be owed under either of the following conditions:

1. Development impact fees have been paid for the development and the permit(s) which triggered the collection of the development impact fees have not expired or been voided.

2. The approval(s) that trigger the collection of development impact fees involve modifications to existing residential or non-residential development that do not: (a) add new Service Units,

(b) increase the impact of existing Service Units on existing or future Capital Facilities, or (c) change the land-use type of the existing development to a different Category of Development for which a higher development impact fee would have been due. To the extent that any modification does not meet the requirements of this Paragraph, the development impact fee due shall be the difference between the development impact fee that was or would have been due on the existing development and the development impact fee that is due on the development as modified.

C. *Temporary Freezing of Development Impact Fee Schedules.* New developments in the Town shall be temporarily exempt from increases in development impact fees that result from the adoption of new or modified development impact fee schedules as follows:

1. On or after the day that the first Building Permit is issued for a single-family residential development, the Town shall, at the permittee's request, provide the permittee with an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that the first Building Permit is issued, and which shall expire at the end of the first business day of the 25th month thereafter. During the effective period of the applicable development impact fee schedule, the Developer shall pay the fees on that schedule, and any Building Permit issued for the same single-family residential development shall not be subject to any new or modified development impact fee schedule.

2. On or after the day that the final approval, as defined in A.R.S. § 9-463.05(T)(4), is issued for a commercial, industrial or multifamily development, the Town shall provide an applicable development impact fee schedule that shall be in force for a period of 24 months beginning on the day that final development approval of a site plan or final subdivision plat is given, and which shall expire at the end of the first business day of the 25th month thereafter. During the effective period of the applicable development impact fee schedule, any Building Permit issued for the same development shall not be subject to any new or modified development impact fee schedule.

3. Any Category of Development not covered under Subsections 7-10-10(C)(1) and (2) above shall pay development impact fees according to the fee schedule that is current at the time of collection as specified in Subsection 7-10-10(A) above.

4. Notwithstanding the other requirements of this Subsection, if changes are made to a development's final site plan or subdivision plat that will increase the number of service units after the issuance of a development impact fee schedule issued pursuant to this Subsection 7-10-10(C), the Town may assess any new or modified development impact fees against the additional service units. If the Town reduces the amount of an applicable development impact fee during the period that a development impact fee schedule issued pursuant to this Subsection 7-10-10(C) of this Section is in force, the Town shall assess the lower development impact fee.

D. *Option to Pursue Special Fee Determination.* Where a development is of a type that does not closely fit within a particular Category of Development appearing on an adopted development impact fee schedule, or where a development has unique characteristics such that the actual burdens and costs associated with providing Necessary Public Services to that development will differ substantially from that associated with other developments in a specified Category of Development, the Town may require the Applicant to provide the Town Manager or authorized designee with an alternative development impact fee analysis. Based on a projection of the actual burdens and costs that will be associated with the development, the alternative development

impact fee analysis may propose a unique fee for the development based on the application of an appropriate Service Unit factor, or may propose that the development be covered under the development impact fee schedule governing a different and more analogous Category of Development. The Town Manager or authorized designee shall review the alternative impact fee analysis and shall make a determination as to the development impact fee to be charged. Such decision shall be appealable pursuant to Section 7-10-13 below. The Town Manager or authorized designee may require the Applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.

(14-06, Amended, 06/19/2014; 06-02, Repealed, 01/05/2006; 00-24, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-11 Development Impact Fee Credits and Credit Agreements

A. *Eligibility of Capital Facility*. All development impact fee Credits must meet the following requirements:

1. One of the following is true:

   a. The Capital Facility, or the financial contribution toward a Capital Facility that will be provided by the Developer and for which a Credit will be issued, must be identified in an adopted Infrastructure Improvements Plan and Fee Report as a Capital Facility for which a development impact fee was assessed; or

   b. The Applicant must demonstrate to the satisfaction of the Town that, given the class and type of improvement, the subject Capital Facility should have been included in the Infrastructure Improvements Plan in lieu of a different Capital Facility that was included in the Infrastructure Improvements Plan and for which a development impact fee was assessed. If the subject Capital Facility is determined to be eligible for a Credit in this manner, the Town shall amend the Infrastructure Improvements Plan to (i) include the subject replacement facility and (ii) delete the Capital Facility that will be replaced.

2. Credits shall not be available for any infrastructure provided by a Developer if the cost of such infrastructure will be repaid to the Developer by the Town through another agreement or mechanism. To the extent that the Developer will be paid or reimbursed by the Town for any contribution, payment, construction, or dedication from any Town funding source including an agreement to reimburse the Developer with future-collected development impact fees pursuant to Section 7-10-12 below, any Credits claimed by the Developer shall be: (a) deducted from any amounts to be paid or reimbursed by the Town; or (b) reduced by the amount of such payment or reimbursement.

B. *Eligibility of Subject Development*. To be eligible for a Credit, the Subject Development must be located within the Service Area of the eligible Capital Facility.

C. *Calculation of Credits*. Credits will be based on that portion of the costs for an eligible Capital Facility identified in the adopted Infrastructure Improvements Plan for which a development fee was assessed pursuant to the Fee Report. If the Gross Impact Fee for a particular category of Necessary Public Service is adopted at an amount lower than the maximum amount justified by the Fee Report, the amount of any Credit shall be reduced in proportion to the difference between the maximum amount justified by the Fee Report, and the Gross Impact Fee adopted. A Credit shall not exceed the actual costs the Applicant incurred in providing the eligible Capital Facility.

D. *Credit Allocation*. Before any Credit can be issued to a Subject Development (or portion thereof), the Credit must be allocated to that development as follows:

1. The Developer and the Town must execute a Credit Agreement including all of the following:

   a. The total amount of the Credits resulting from provision of an eligible Capital Facility.

   b. The estimated number of Service Units to be served within the Subject Development.

   c. The method by which the Credit values will be distributed within the Subject Development.

2. It is the responsibility of the Developer to request allocation of development impact fee Credits through an application for a Credit Agreement (which may be part of a Development Agreement entered into pursuant to Section 7-10-12 below).

3. If a Building Permit is issued or a Water/sewer connection is purchased, and a development impact fee is paid prior to execution of a Credit Agreement for the Subject Development, no Credits may be allocated retroactively to that permit or connection. Credits may be allocated to any remaining permits for the Subject Development in accordance with this Article.

4. If the entity that provides an eligible Capital Facility sells or relinquishes a development (or portion thereof) that it owns or controls prior to execution of a Credit Agreement or Development Agreement, Credits resulting from the eligible Capital Facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor(s) in interest for the Subject Development.

5. If multiple entities jointly provide an eligible Capital Facility, all entities must enter into a single Credit Agreement with the Town, and any request for the allocation of Credit within the Subject Development(s) must be made jointly by the entities that provided the eligible Capital Facility.

6. Credits may only be reallocated from or within a Subject Development with the Town's approval of an amendment to an executed Credit Agreement, subject to the following conditions:

   a. The entity that executed the original agreement with the Town, or its legal successor in interest and the entity that currently controls the Subject Development are parties to the request for reallocation.

   b. The reallocation proposal does not change the value of any Credits already issued for the Subject Development.

7. A Credit Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:

   a. The entity that executed the original agreement with the Town or its legal successor in interest, the entity that currently controls the Subject Development, and the entity that controls the non-contiguous parcel are parties to the request for reallocation.

   b. The reallocation proposal does not change the value of any Credits already issued for the

Subject Development.

c. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.

d. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.

e. The Credit Agreement specifically states the value of the Credits to be allocated to each parcel and/or Service Unit, or establishes a mechanism for future determination of the Credit values.

f. The Credit Agreement does not involve the transfer of Credits to or from any property subject to a Development Agreement.

E. *Credit Agreement*. Credits shall only be issued pursuant to a Credit Agreement executed in accordance with Subsection D of this Section. The Town Manager is authorized by this Article to enter into a Credit Agreement with the controlling entity of a Subject Development, subject to the following:

1. The Developer requesting the Credit Agreement shall provide all information requested by the Town to allow it to determine the value of the Credit to be applied.

2. An application for a Credit Agreement shall be submitted to the Town by the Developer within one year of the date on which ownership or control of the Capital Facility passes to the Town.

3. The Developer shall submit a draft Credit Agreement to the Town Manager or authorized designee(s) for review in the form provided to the Applicant by the Town. The draft Credit Agreement shall include, at a minimum, all of the following information and supporting documentation:

a. A legal description and map depicting the location of the Subject Development for which Credit is being applied. The map shall depict the location of the Capital Facilities that have been or will be provided.

b. An estimate of the total Service Units that will be developed within the Subject Development depicted on the map and described in the legal description.

c. A list of the Capital Facilities, associated physical attributes, and the related costs as stated in the Infrastructure Improvements Plan.

d. Documentation showing the date(s) of acceptance by the Town, if the Capital Facilities have already been provided.

e. The total amount of Credit to be applied within the Subject Development and the calculations leading to the total amount of Credit.

f. The Credit amount to be applied to each Service Unit within the Subject Development for each Category of Necessary Public Services.

4. The Town's determination of the Credit to be allocated is final.

5. Upon execution of the Credit Agreement by the Town and the Applicant, Credits shall be deemed allocated to the Subject Development.

6. Any amendment to a previously-approved Credit Agreement must be initiated within two years of the Town's final acceptance of the eligible Capital Facility for which the amendment is requested.

7. Any Credit Agreement approved as part of a Development Agreement shall be amended in accordance with the terms of the Development Agreement and Section 7-10-12 below.

F. *Credit Issuance*. Credits allocated pursuant to Subsection 7-10-11(D) above may be issued and applied toward the Gross Impact Fees due from a development, subject to the following conditions:

1. Credits issued for an eligible Capital Facility may only be applied to the development impact fee due for the applicable Category of Necessary Public Services, and may not be applied to any fee due for another Category of Necessary Public Services.

2. Credits shall only be issued when the eligible Capital Facility from which the Credits were derived has been accepted by the Town or when adequate security for the completion of the eligible Capital Facility has been provided in accordance with all terms of an executed Development Agreement.

3. Where Credits have been issued pursuant to Subsection 7-10-11(F)(2), an impact fee due at the time a Building Permit is issued shall be reduced by the Credit amount stated in or calculated from the executed Credit Agreement. Where Credits have not yet been issued, the Gross Impact Fee shall be paid in full, and a refund of the Credit amount shall be due when the Developer demonstrates compliance with Subsection 7-10-11(F)(2) in a written request to the Town.

4. Credits, once issued, may not be rescinded or reallocated to another permit or parcel, except that Credits may be released for reuse on the same Subject Development if a Building Permit for which the Credits were issued has expired or been voided and is otherwise eligible for a refund under Subsection 7-10-14(A)(2)(a) below.

5. Notwithstanding the other provisions of this Section 7-10-11, Credits issued prior to January 1, 2012, may only be used for the Subject Development for which they were issued. Such Credits may be transferred to a new owner of all or part of the Subject Development in proportion to the percentage of ownership in the Subject Development to be held by the new owner.

(14-06, Amended, 06/19/2014; 06-02, Repealed, 01/05/2006; 00-25, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-12 Development Agreements

Development Agreements containing provisions regarding development impact fees, development impact fee Credits, and/or disbursement of revenues from development impact fee accounts shall comply with the following:

A. *Development Agreement Required.* A Development Agreement is required to authorize any of the following:

1. To issue Credits prior to the Town's acceptance of an eligible Capital Facility.

2. To allocate Credits to a parcel that is not contiguous with the Subject Development and that does not meet the requirements of Subsection 7-10-11(D)(7) above.

3. To reimburse the Developer of an eligible Capital Facility using funds from development impact fee accounts.

4. To allocate different Credit amounts per Service Unit to different parcels within a Subject Development.

5. For a single family residential Dwelling Unit, to allow development impact fees to be paid at a later time than the issuance of a Building Permit as provided in this Section.

B. *General Requirements.* All Development Agreements shall be prepared and executed in accordance with A.R.S. § 9-500.05 and any applicable requirements of the Town Code. Except where specifically modified by this Section, all provisions of Section 7-10-11 above shall apply to any Credit Agreement that is authorized as part of a Development Agreement.

C. *Early Credit Issuance.* A Development Agreement may authorize Credit Issuance prior to acceptance of an eligible Capital Facility by the Town when the Development Agreement specifically states the form and value of the security (i.e. bond, letter of Credit, etc.) to be provided to the Town prior to Credit Issuance. The Town Attorney shall determine the acceptable form and value of the security to be provided.

D. *Non-Contiguous Credit Allocation.* A Development Agreement may authorize the allocation of Credits to a non-contiguous parcel only if all of the following conditions are met:

1. The non-contiguous parcel is in the same Service Area as that served by the eligible Capital Facility.

2. The non-contiguous parcel receives a Necessary Public Service from the eligible Capital Facility.

3. The Development Agreement specifically states the value of the Credits to be allocated to each parcel and/or Service Unit, or establishes a mechanism for future determination of the Credit values.

E. *Uneven Credit Allocation.* If the Credits are not to be allocated evenly, the Development Agreement must specify how Credits will be allocated amongst different parcels on a per Service Unit basis. If the Development Agreement is silent on this topic, all Credits will be allocated evenly amongst all parcels on a per Service Unit basis.

F. *Use of Reimbursements.* Funds reimbursed to Developers from impact fee accounts for construction of an eligible Capital Facility must be utilized in accordance with applicable law for the use of Town funds in construction or acquisition of Capital Facilities, including A.R.S. § 34-201, *et seq.*

G. *Deferral of Fees.* A Development Agreement may provide for the deferral of payment of development impact fees for a single-family residential development beyond the issuance of a Building Permit; provided that a development impact fee may not be paid later than 15 days after the issuance of the certificate of occupancy for that Dwelling Unit. The Development Agreement shall provide for the value of any deferred development impact fees to be supported by appropriate security, including a surety bond, letter of credit, or cash bond.

H. *Waiver of Fees.* If the Town agrees to waive any development impact fees assessed on development in a Development Agreement, the Town shall reimburse the appropriate development impact fee account for the amount that was waived.

I. *No Obligation.* Nothing in this Section obligates the Town to enter into any Development Agreement or to authorize any type of Credit Agreement permitted by this Section.

(14-06, Amended, 06/19/2014; 06-02, Repealed, 01/05/2006; 01-03, Amended, 01/18/2001, Council Amended 00-26, Effective 4/19/01 at 12:01 a.m.; 00-26, Added, 11/16/2000, Approved by Council, Effective 2/15/01 at 12:01 a.m.)

Section 7-10-13 Appeals

A development impact fee determination by Town staff may be appealed in accordance with the following procedures:

A. *Limited Scope.* An appeal shall be limited to disputes regarding the calculation of the development impact fees for a specific development and/or permit and calculation of Service Unit's for the development.

B. *Form of Appeal.* An appeal shall be initiated in such written form as the Town may prescribe, and submitted to the Town Manager or authorized designee.

C. *Timing of Appeal to Manager*. The Applicant may appeal the calculation to the Town Manager or authorized designee within 30 calendar days of the calculation.

D. *Action by Manager*. The Town Manager or authorized designee shall act upon the appeal within 14 calendar days of receipt of the appeal, and the Applicant shall be notified of the Town Manager or authorized designee's decision in writing.

E. *Final Decision.* The Town Manager or authorized designee's decision regarding the appeal is final.

F. *Fees During Pendency.* Building permits may be issued during the pendency of an appeal if the Applicant (1) pays the full impact fee calculated by the Town at the time the appeal is filed or (2) provides the Town with financial assurances in the form acceptable to the Town Attorney equal to the full amount of the impact fee. Upon final disposition of an appeal, the fee shall be adjusted in accordance with the decision rendered, and a refund paid if warranted. If the appeal is denied by the Town Manager or authorized designee, and the Applicant has provided the Town with financial assurances as set forth in clause (2) of this paragraph, the Applicant shall deliver the full amount of the impact fee to the Town within ten days of the Town Manager or designee's final decision on the appeal. If the Applicant fails to deliver the full amount of the impact fees when required by this Subsection, the Town may draw upon such financial assurance instrument(s) as necessary to recover the full amount of the impact fees due from the Applicant.

(14-06, Amended, 06/19/2014; 06-02, Renumbered, 01/05/2006, Renumbered as Section 7-10-9; 01-05, Amended, 01/18/2001, Council Approved amending 00-27, Effective 4/19/01 12:01 a.m.; 00-27, Added, 11/16/2000, Approved by Council)

Section 7-10-14 Refunds of Development Impact Fees

A. *Refunds.* A refund (or partial refund) will be paid to any current owner of property within the Town who submits a written request to the Town and demonstrates that:

1. The permit(s) that triggered the collection of the development impact fee have expired or been voided prior to the commencement of the development for which the permits were issued and the development impact fees collected have not been expended, encumbered, or Pledged for the repayment of Financing or Debt; or

2. The owner of the subject real property or its predecessor in interest paid a development impact fee for the applicable Capital Facility on or after August 1, 2014, and one of the following conditions exists:

   a. The Capital Facility designed to serve the subject real property has been constructed, has the capacity to serve the subject real property and any development for which there is reserved capacity, and the service which was to be provided by that Capital Facility has not been provided to the subject real property from that Capital Facility or from any other infrastructure.

   b. After collecting the fee to construct a Capital Facility the Town fails to complete construction of the Capital Facility within the time period identified in the Infrastructure Improvements Plan, as it may be amended, and the corresponding service is otherwise unavailable to the subject real property from that Capital Facility or any other infrastructure.

   c. For a Category of Necessary Public Services other than Water or Wastewater Facilities, any part of a development impact fee is not spent within ten years of the Town's receipt of the development impact fee. Any part of a development impact fee for Water or Wastewater Facilities is not spent within 15 years of the Town's receipt of the development impact fee. For the purpose of determining whether fees have been spent, the Town shall use a first-in, first-out process.

   d. Any part of a development impact fee for Water or Wastewater Facilities is not spent within 15 years of the Town's receipt of the development impact fee. For the purpose of determining whether fees have been spent, the Town shall use a first-in, first-out process.

   e. The development impact fee was calculated and collected for the construction cost to provide all or a portion of a specific Capital Facility serving the subject real property and the actual construction costs for the Capital Facility are less than the construction costs projected in the Infrastructure Improvements Plan by a factor of 10% or more. In such event, the current owner of the subject real property shall, upon request as set forth in this Section A, be entitled to a refund for the difference between the amounts of the development impact fee charged for and attributable to such construction cost and the amount the development impact fee would have been calculated to be if the actual construction cost had been included in the Fee Report. The refund contemplated by this Subsection shall relate only to the costs specific to the construction of the applicable Capital Facility and shall not include any related design, administrative, or other costs not directly incurred for construction of the Capital Facility that are included in the development impact fee as permitted by A.R.S. § 9-463.05.

B. *Earned Interest.* A refund of a development impact fee shall include any interest actually earned on the refunded portion of the development impact fee by the Town from the date of collection to the date of refund; provided, however that interest is not required to be paid if the refund is requested by the Developer or property owner due to voluntary cessation or abandonment of work. All refunds shall be made to the record owner of the property at the time the refund is paid.

C. *Refund to Government.* If a development impact fee was paid by a governmental entity, any refund shall be paid to that governmental entity.

D. *Time Limitation*. Any refund request must be made not later than 180 days following the occurrence of any event described in Subsections 7-10-14(A)(2)(a)-(e) above.

(14-06, Added, 06/19/2014)

Section 7-10-15 Oversight of Development Impact Fee Program

A. *Annual Report.* Within 90 days of the end of each fiscal year, the Town shall file with the Town Clerk an unaudited annual report accounting for the collection and use of the fees for each Service Area and shall post the report on its website in accordance with A.R.S. § 9-463.05(N) and (O), as amended.

B. *Biennial Audit.* In addition to the Annual Report described in Subsection 7-10-15(A) above, the Town shall provide for a biennial, certified audit of the Town's Land Use Assumptions, Infrastructure Improvements Plan and development impact fees.

1. An audit pursuant to this Subsection shall be conducted by one or more Qualified Professionals who are not employees or officials of the Town and who did not prepare the Infrastructure Improvements Plan.

2. The audit shall review the collection and expenditures of development fees for each project in the plan and provide written comments describing the amount of development impact fees assessed, collected, and spent on capital facilities.

3. The audit shall describe the Level of Service in each Service Area, and evaluate any inequities in implementing the Infrastructure Improvements Plan or imposing the development impact fee.

4. The Town shall post the findings of the audit on the Town's website and shall conduct a public hearing on the audit within 60 days of the release of the audit to the public.

5. For purposes of this Section, a certified audit shall mean any audit authenticated by one or more of the Qualified Professionals conducting the audit pursuant to Subsection 7-10-15(B)(1) above.

(14-06, Added, 06/19/2014)

Article 7-11

ENFORCEMENT OF STATE RESIDENTIAL RENTAL PROPERTY REGISTRATION

Sections:

Section 7-11-1 Enforcement of State Residential Rental Property Registration

A. "Residential rental property" shall have the same meaning as provided by Ariz. Rev. Stat. § 33-1901, as amended.

B. All owners of residential rental property located within the corporate boundaries of the Town shall register with the Maricopa County Assessor the information required by Ariz. Rev. Stat. § 33-1902, as amended, in the manner prescribed by the Assessor.

C. The Town shall assess a civil penalty in accordance with Ariz. Rev. Stat. § 33-1902, as amended, against any owner who fails to comply with the provisions thereof.

(09-05, Added, 03/05/2009)

Article 7-12

ILLEGAL CONSTRUCTION SITE ACTIVITY

Sections:

Section 7-12-1 Purpose and Intent

The Town of Fountain Hills supports legal building activity in all its forms. The Town also recognizes that certain building activities may negatively impact adjacent property. While these impacts should be tolerated for the initial period of time associated with typical building activity, their prolonged existence can be a nuisance, particularly to adjacent neighbors. This Article is adopted for the purpose of mitigating the negative impacts that unreasonably prolonged building-related activities have on neighboring property.
(09-07, Added, 09/17/2009)

Section 7-12-2 Mitigation of Negative Impacts

A. The owner of any property subject to a building permit for construction activity on that property shall not maintain on the property, or allow to be maintained on the property, construction activities that cause unreasonable negative health, safety or welfare impacts to neighboring properties.

B. If a building permit is expired for construction on property, the owner thereof shall immediately (1) remove, or cause to be removed, any construction equipment, materials and debris and (2) restore the property to as safe a condition as existed prior to commencement of construction activities thereon, as determined by the Chief Building Official.

C. The Chief Building Official shall (1) notify the property owner of any conditions on such property that are in violation of Subsection 7-12-2(A) or (B) above by first class mail and (2) provide the property owner with a reasonable period of time to correct or mitigate the condition. The Chief Building Official shall determine if and when the condition has been corrected.

D. Should the condition continue beyond a reasonable period of time, as determined by the Chief Building Official and included in the notice request under Subsection 7-12-2(C) above, the property shall be considered a nuisance pursuant to Article 10-2 of this Code and shall be subject to all penalties related thereto. In addition to prosecuting the nuisance in the manner described in this Code, the Town may, at its sole option, also cause the removal of such nuisance by any means permitted pursuant to Ariz. rev. Stat. § 9-499, as amended, or Article 10-4 of this Code.

(09-07, Added, 09/17/2009)

Section 7-12-3 Building Permit Extension of Time

A. Prior to any extension of time granted to a property owner for a building permit, the Chief Building Official shall inspect the property to ensure that no unsafe conditions exist and that the property owner is not in violation of any provision of this Article 7-12.

B. Prior to extending any permit, the Chief Building Official shall ensure that any stock piled dirt or other construction material is fully contained on the property and does not exceed a height of twenty-five (25) feet, measured from natural grade.

(09-07, Added, 09/17/2009)

Section 7-12-4 Unrelated Equipment, Material or Debris

A. It shall be a violation of this Code for a property owner or contractor to keep on property any equipment, material or debris unrelated to authorized construction activity on the property.

B. It shall be the responsibility of the property owner to ensure that all debris resulting from authorized construction is contained within an approved container on the site.

(09-07, Added, 09/17/2009)

Section 7-12-5 Authority of Chief Building Official

The provisions of this Article shall not restrict or otherwise limit the ability of the Chief Building Official to take whatever action may be necessary in the event of an immediate threat to public health or safety as a result of any construction related activity.

(09-07, Added, 09/17/2009)